IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6241 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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KANUBHAI LAXMANBHAI CHUNARA

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR PREMAL JOSHI, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/02/2000

ORAL JUDGEMENT

The detenu has filed this petition under Article 226 of the Constitution of India, challenging the order of detention, vide Annexure 'A' dated 12.6.1999 passed by the Commissioner of Police, Ahmedabad City under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as the PASA].

2. Today, the detaining authority has filed an affidavit to substantiate the case. From the grounds of detention, it appears that the detenu was engaged in transporting illicit liquor. The detenu was also found beating innocent persons of the locality and the passerby.

3. In the instant case, it is not necessary to go into the propriety or legality of the order of detention because the representation made by the petitioner has not

been decided by the State Government. In paragraph 18, the petitioner has made the following averments:

"The petitioner says and submits that his mother has made a representation on 3.8.1999 to the Hon'ble Home Minister. It is duly received by the Home Minister Office, whether it is considered or not? .... "

4. Mr. Desai, learned Government Pleader appearing along with Mr. Premal Joshi, learned Assistant Government Pleader submitted that the representation has been decided, but affidavit is not filed on behalf of the State.

5. Suffice it to say that if any action has been taken in view of the representation and the representation has been decided, that fact should be placed before the Court by way of an affidavit. The decision if any taken, has remained in the file of the State, the State has no say. In the case of RAJINDRA v. COMMISSIONER OF POLICE reported in 1994 (Suppl.) 2 SCC 716, the Apex Court deprecated the method of showing files to the Court, and has observed as under :-

"The Court is expected to go by the pleadings and the Central Government is expected to place the factual material in connection with the detention order by filing a counter-affidavit so that the petitioner has an opportunity to meet with the factual information. The indulgence shown by the Courts in perusing the file seems to have given an impression that the Central Government is under no obligation to file a counter-affidavit to explain the delay. This impression has to be removed once and for all. The Central Government is under obligation to file its counter within the time permission by the Court failing which the case may go by default. Production of the file is not a substitute for a counter to be filed by the Central Government. The Court peruses the file not to absolve the Central Government of its responsibility to file a counter but to satisfy its conscience if it notices ambiguities in the Government's stand. If the Courts have shown indulgence by perusing the file where affidavit is not filed for good reason, let that indulgence not be misused by construing it to be a licence to dispense with the obligation to file a return."

6. It is required to be noted that in several cases, even this Court has pointed out the aforesaid decision of the Apex Court. However, it appears that the same method is continued by the Government of showing the files to the Court. Only if a counter is filed, it will be possible for the detenu to make submission meeting with the contentions or to file an affidavit controverting the contentions. The Court, in some cases, may peruse the files tendered by the Government, but it does not mean that the State is absolved from the responsibility of filing affidavit. In all the cases listed today for hearing, no return is filed by the competent authority deciding the representation. If the affidavit is filed in advance that will enable the counsel for detenu to consider whether the ground raised should be dropped or should point to the Court that the representation has not been disposed of in accordance with law. It appears that the counsel for the respondent is under misconception that the Court has to see the files produced by the State without filing an affidavit.

7. In the case of detenu, it is required to be noted that the detenu is detained without a trial and the detaining authority as well as the State Government must satisfy the Court that appropriate procedure as required under the law was followed. In the absence of material on record, it would not be possible for the Court to say that the representation which was forwarded was decided by the State in accordance with law. If the State wanted to say that the same was decided in accordance with law, it was the duty of the State to place the relevant material on record. Under the circumstances, the continued detention is required to be held as bad and illegal. The detenu is ordered to be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

csm./ ----------